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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/926,694	02/28/2002	Andreas Ulli	5085	3017

7590 12/17/2003

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EXAMINER
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ZIRKER, DANIEL R

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 12/17/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

Applicant(s)

Examiner

Group Art Unit

— The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address —

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE -3- MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- ☒ Responsive to communication(s) filed on 9/10/03
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

### Disposition of Claims

- ☒ Claim(s) 8-10, 13, 14 is/are pending in the application.
- ☐ Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 8-10, 13, 14 is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement

### Application Papers

- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).
- ☐ All ☐ Some\* ☐ None of the:
- ☐ Certified copies of the priority documents have been received.
- ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
- ☐ Copies of the certified copies of the priority documents have been received
- in this national stage application from the International Bureau (PCT Rule 17.2(a))

\*Certified copies not received: \_\_\_\_\_

### Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_
- ☒ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other \_\_\_\_\_

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1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

2. Claims 8-10 and newly renumbered claims 13 and 14 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. More particularly, despite the recent extensive claim amendments and additions quite a few problems remain, particularly with respect to proper antecedent basis. The Examiner will point some of these informalities out and it is hoped that applicant~~s~~ will correct the remaining ones following the Examiner's guidelines. In claim 8 and throughout the Examiner questions "partial adhesive" as it refers to the surface coating; the Examiner suggests that applicant might wish to use "discontinuous" adhesive coating or similar type language. In claim 8 no proper antecedent basis exists for the various surfaces upon which the adhesive coating is coated on each of the two presumed surfaces of the "substrate". In claim 10 the phrases "first sheet of material" and "second surface of material" are considered vague and indefinite with respect to "material", and several of the aforementioned antecedent basis problems also exist in this claim. Newly presented claims 11 and 12 have been renumbered as claims 13 and 14 since they<sup>re</sup> were previously non-elected claims 11 and 12 in the application.

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Additionally, claim "11" as presented by applicant is dependent upon itself, and in each of newly renumbered claims 13 and 14 the phrase "is only partially aligned with the surface adhesive coating" is believed to be rather vague and indefinite with respect to the surface microstructure intended to be claimed. That is, it is believed that such language is utilized to indicate that the two surface coatings are <sup>not</sup> exactly identical to each other <sup>and</sup> ~~except for the fact~~ that they are on opposing opposite surfaces.

3. Claims 8-10, 13 and 14 are rejected under 35 U.S.C. § 103(a) as being unpatentable over applicant's admission in the specification at page 2, second complete paragraph taken in view of either Groshens -579 or -800, or Japanese Patent Abstract -172, substantially for reasons of record. The Examiner has little to add to his prior position of record, which is herein essentially reiterated in an attempt to clarify the record. Applicant appears to admit that the structure of a suitable "substrate" which can be an air permeable, water impermeable fabric that is coated on one surface with a desired pattern of adhesive dots and then laminated to another "sheet of material" to form an air permeable, water impermeable fabric is well known, with the only missing element being an at least partially aligning coating of a suitable adhesive composition on the "substrate's" opposing outer surface; applicants also claim the

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intermediate product of the air permeable, water impermeable fabric coated on each surface with non-identical discontinuous adhesive patterns. Each of the secondary references, however discloses the concept of coating a suitable fabric or other chosen layer on both opposing outer surfaces with a suitable, e.g. adhesive dot pattern on each outer surface that can be aligned in any manner desired. Note that JP Abstract -172 also discloses the concept of coating a suitable sheet material such as cloth or another suitable fabric with dots (i.e. "paste") onto both the upper and lower surfaces of the sheet material. As such, one of ordinary skill, motivated by the desire to adhere a suitable sheet article such as a fabric layer onto both surfaces of a central air permeable water impermeable layer such as are well known in the art to form a desired article of clothing or apparel would have more than enough motivation to deposit the coating of adhesive dots in the "at least partially aligned" or "only partially aligned" discontinuous adhesive patterns taught by each of the secondary references and thereby either form, or clearly render obvious, the claimed genus of articles set forth in applicant's claims. The Examiner further notes that earlier in the prosecution applicant appears to have misunderstood what sections of the specification the Examiner was relying upon for his holding of a prior art admission, since <sup>his</sup> references to various Swiss patents were in the paragraph immediately following the

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admission which the Examiner relies upon. Finally, applicant's remarks previously set forth that the secondary references are silent about water impermeable, vapor impermeable films fails to appreciate that such prior art has been admitted by applicant in his relied upon admission in the specification as being well known. In summary, applicant's independent claims, in their broadest embodiment, read upon a well known fabric sheet that is coated on each surface only with discontinuous adhesive coatings, and in their more narrow independent claim 10 further contain the presence of well known fabric layers adhered to their core layer material. The Examiner respectfully submits that such structures are believed to be well known to one of ordinary skill in the art. Other parameters that are not either expressly or inherently disclosed are each believed to be obvious modifications to one of ordinary skill, in the absence of unexpected results.

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Note also Gleichenhagen et al.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel Zirker whose telephone number is (703) 308-0031. The examiner can normally be reached on Monday-Thursday from 8:30 A.M. to 6:00 P.M. The examiner can also be reached on alternate Fridays.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris, can be reached on (703) 308-2414. The fax phone number for this Group is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0661.

Dzirker:cdc

December 3, 2003

DANIEL ZIRKER  
PRIMARY EXAMINER  
GROUP-1300-  
1700

*Daniel Zinker*